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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/660,630	09/12/2003	Paul J. Lemens	081069-0305925	7071
909	7590 07/07/2004		EXAM	INER
PILLSBURY WINTHROP, LLP			SELLS, Ja	AMES D
P.O. BOX 10 MCLEAN, V			ART UNIT	PAPER NUMBER
,			1734	

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.   Applicant(s)   Chember 1   April   Chember 2   Applicant					h				
## Deficie Action Summary  ## Examiner    James Sells			Application No.	Applicant(s)	(*-				
James Sells   1734			10/660,630	LEMENS ET AL.					
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Elementor of the map by a revalidate with the processor of 3 CPR 1.136(a). In no event, however, may a reply be timely filed and set SK (5) MONTHS from the unaling date of this communication.  I NO pointed for reply is specified because, the maximum statutory period vallege and well gets SK, MONTHS from the unaling date of this communication.  I NO pointed for reply is appealed because, the maximum statutory period vallege and well egies SK, MONTHS from the unaling date of this communication.  I NO pointed for reply is appealed because, the maximum statutory period vallege and well egies SK, MONTHS from the unaling date of this communication.  I NO pointed reply is specified because, the maximum statutory period vallege and well egies SK, MONTHS from the unaling date of this communication.  Page 17 (Page 17 (Pa		Office Action Summary	Examiner	Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Ederations of three trays be available in after the prevalence of 37 CFR 1.36(s). In no overst, however, may a reply be limitely lifed  Efficiency of three trays peeded above, the maximum cladulary period will apply only will the statisticity minimum of thinly (00) days will be considered limitly.  If NO period for regly is specified above, the maximum cladulary period will apply and will expire SIX (0) MONTH'S from the maxing date of this communication.  Failure to regressive the specified above, the maximum cladulary period will apply and will expire SIX (0) MONTH'S from the maxing date of this communication, which is communication and patient term adjustment. See 37 CFR 1.794(s).  Status  1) Responsive to communication(s) filled on									
THE MAILING DATE OF THIS COMMUNICATION.  Ederacisca of time rangle variable under the procisions of 3 CFR 1.13(6). In no event, however, may a raply be timely filled after 5X (6) MONTHS from the nealing date of this communication.  It has period to many spacefied date or size that many and the process of			pears on the cover sheet with the o	correspondence address					
1) Responsive to communication(s) filed on	THE   - Exter after - If the - If NC - Failu Any r	MAILING DATE OF THIS COMMUNICATION. nsions of time may be available under the provisions of 37 CFR 1.1 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a repl or period for reply is specified above, the maximum statutory period or to reply within the set or extended period for reply will, by statute reply received by the Office later than three months after the mailin	36(a). In no event, however, may a reply be ting within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	mely filed ys will be considered timely. n the mailing date of this communication. ED (35 U.S.C. § 133).					
2a) This action is FINAL.  2b) ∑ This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) ∑ Claim(s) 1-21 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) ☐ Claim(s) is/are allowed.  6) ∑ Claim(s) 1-21 is/are rejected.  7) ☐ Claim(s) is/are objected to.  8) ☐ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) ☐ The specification is objected to by the Examiner.  10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to See 37 CFR 1.121(d).  11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) ☐ All b) ☐ Some * c) ☐ None of:  1. ☐ Certified copies of the priority documents have been received in Application No  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1) ☐ Notice of References Cited (PTO-892)  2) ☐ Notice of References Cited (PTO-1449 or PTO/S8/08)  5) ☐ Notice of Informal Patent Application (PTO-152)	Status		•						
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### **DETAILED ACTION**

## Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,675,854. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of applicant's claims 1-21 are contained within or made obvious by claims 1-17 of US Patent 6,675,854.

### References

3. References B is cited as prior art of interest.

## Telephone/Fax

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sells whose telephone number is (571) 272-

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1237. The examiner can normally be reached on Monday-Friday between 9:30 AM and 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached at (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

JAMES SELLS PRIMARY EXAMINER TECH. CENTER 1700